

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION**

CRIMINAL NO. 1:00CR9

UNITED STATES OF AMERICA

VS.

THOMAS RUTHERFORD CARSON

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ORDER

THIS MATTER is before the Court on the Defendant's *pro se* motion for modification or reduction of sentence pursuant to 18 U.S.C. § 3582(c)(2) and the recent Amendments to the Sentencing Guidelines regarding crack cocaine offenses. The motion is denied.

On June 13, 2008, counsel appointed by the Court filed a motion on the Defendant's behalf seeking a reduction of his sentence pursuant to the amended Guidelines. **See Defendant's Motion for Reduction of Sentence pursuant to 18 U.S.C. § 3582(c)(2), filed under seal June 13, 2008.** After receipt of the supplemental presentence report, the Court determined that the Defendant was not eligible for a sentence reduction due to the fact that he was found to be a career offender at the original

sentencing and that “the resulting offense level for a career offender is greater than the offense level for the quantity of drugs found both at the date of the original sentencing and following the passing of the retroactive crack cocaine amendment,” and the Defendant’s motion was denied.

Order Regarding Motion for Sentence Reduction Pursuant to 18

U.S.C. § 3582(c)(2), filed November 13, 2008. On November 25, 2008, the Defendant timely appealed the Court’s ruling and the appeal is currently pending with the Fourth Circuit Court of Appeals.¹

IT IS, THEREFORE, ORDERED that the Defendant’s *pro se* motion for modification or reduction of sentence is hereby **DENIED** as moot.

Signed: January 15, 2009



Lacy H. Thornburg
United States District Judge



¹ The Court notes that the Defendant is represented by a federal defender. The Defendant is advised that he should communicate with the Court only through his attorney. ***United States v. D’Amario*, 2008 WL 624768 at *1, 2008 U.S. App. LEXIS 5079 at *4 (3d Cir. 2008) (holding that district courts are not obligated to consider *pro se* motions from a defendant who is represented by counsel because “[t]he Constitution does not confer a right to proceed simultaneously by counsel and *pro se*”).**